IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.706 OF 2001

Bhiwandi Nizampur Municipal Council, Bhiwandi, Dist. Thane. .. Petitioner

v/s.

Shri Rajesh Pandharinath Pawar, Adult, Occup:Service, R/o. 602, Devji Nagar, 2nd floor, Narapoli, Bhiwandi-421 302, Dist.Thana. .. Respondent

Mr.R.M.Agarwal for the petitioner.

Ms.N.D.Buch with Ms.Bina Dholakia for the respondent.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 26th September, 2005

ORAL JUDGMENT

By this petition the petitioner challenges the award of the Labour Court passed in Reference (IDA) No.213 of 1994.

2. The respondent was employed with the petitioner-Municipal Council from 3rd January, 1991 to 5th April, 1991 as a Sub-Station Officer in the capacity of badli workman. He was reappointed in the post as a badli workman on 12.2.1991 for a further period of six months on probation. He was continued in this position even after the probationary period was over. The respondent

contends that the petitioner had continued him as a permanent employee in the post of Sub-Station Officer. However, by order dated 12th March, 1992, his services were terminated with immediate effect. The respondent raised a dispute under the Industrial Disputes Act. Reference was obtained for adjudication of that dispute. The respondent contended in his statement of claim that his services had been terminated without following the provisions of section 25F of the Industrial Disputes Act and therefore, termination of his services was illegal and void ab-initio.

3. In the written statement, the petitioner-Municipal Council contended that the respondent was employed as a badli workman at various points of time. They contended that the respondent did not possess the requisite qualifications for being continued as a Sub-Station Officer and therefore, his services came to be terminated. The letters of termination of his services were issued in view of the resolution passed by the Standing Committee of the Municipal Council.

4. Evidence was led by the respondent to establish his right that he had been continued in service and was entitled to be made permanent after being employed as badli worker in the post of Sub-Station

Officer. Significantly, the Municipal Council did not care to lead any evidence in rebuttal. Nor did the Municipal Council lead evidence to establish the fact that the respondent was not duly qualified to hold the post of Sub-Station Officer.

5. The Labour Court by its impugned award has granted reinstatement with continuity of service and full back wages from 12.3.1992. The Labour Court has observed that the respondent-workman had proved that he was in service from 3rd January, 1991 to 5th April, 1991 and from 12th June, 1991 to 12th March, 1992 with the petitioner-Municipal Council. The Labour Court has observed that the termination order issued to the respondent did not disclose any reason for terminating him from service. The Labour Court has observed that although the petitioner had contended that the respondent did not possess the requisite qualifications, there was documentary evidence on record to indicate that the respondent had been trained at the All India Local Bodies Institute at Baroda, Gujarat and therefore, was adequately qualified for employment. The Labour Court then observed that after taking into consideration the provisions of the Industrial Employees Standing Orders Act, the respondent was deemed to have been confirmed in view of the fact that he had completed three months service as a probationer. The Labour

Court, therefore, took the view that having completed 240 days in service, the respondent was entitled to a notice of retrenchment under section 25F prior to his services being terminated. By not doing so, the termination order issued to the respondent was set aside and the Municipal Council was directed to reinstate the respondent in the post last held by him with continuity of service and full back wages from 12th March, 1992.

6. When the present petition was admitted, interim relief was refused in respect of the order of reinstatement with continuity of service. The only interim relief granted was a stay to the payment of back wages. Aggrieved by this direction at the stage of admission, the petitioner had filed SLP No.21809 of 2001 before the Apex Court. This SLP was dismissed. The petitioner has therefore, continued the respondent in service as a Sub-Station Officer. Undisputedly, the respondent had sought permission by his letter dated 22nd March, 2005 to enrol for training as a Sub-Station Officer at Nagpur. By their reply dated 13th June, 2005, the Deputy Commissioner of the Municipal Council has refused permission as there was heavy workload at that moment. An affidavit has been filed on 22nd August, 2005 by the respondent indicating that an employee was working as Sub-Station Officer from 1986 till his

superannuation in July, 2004 without having any qualifications for the post of Sub-Station Officer. After retirement that employee was appointed as Special Officer which is a post higher in rank than the Sub-Station Officer and is continued in that post till today.

7. The learned advocate appearing for the petitioner submits that the services of the respondent were terminated because he did not possess the requisite qualifications to continue as Sub-Station Officer. It is submitted that although the respondent was qualified as a fireman, he did not have any qualifications to be appointed as a Sub-Station Officer. It is contended that the Sub-Station Officer can be appointed on promotion after successfully completing the departmental examination and he should have passed his S.S.C. In the alternative, the candidate should have five years experience as a leading fireman driving operator or 10 years experience as a fireman. The firemen are also expected to undergo training for the post of Sub-Station Officer. Therefore, according to the learned advocate, the petitioner was required to terminate the services of the respondent since he was not adequately qualified for continuing as Sub-Station Officer. Reliance is placed on the judgment of the Division Bench of this court in the case of Mohd.Arif Sk.Mahmood &

anr. v. Director of Municipal Administration and ors. in Writ Petition No.640 of 1997. The Division Bench sitting at Nagpur has held in that case that the petitioners did not possess the requisite qualifications and that their recruitment in the Municipal Council by its President was facilitated because of a back-door entry into service. The Division Bench observed that since the petitioners in that case had been given a back-door entry, they had no legal right of employment and they could not be continued in employment.

8. The learned advocate appearing for the respondent submits that the order of termination issued to the respondent does not disclose any reasons for effecting termination of his services, nor was he paid any retrenchment compensation. According to the learned advocate for the respondent, if the services of the respondent were required to be terminated on account of him not possessing the requisite qualifications, it was necessary for the petitioner to disclose this to the respondent and to ascertain the same by holding an enquiry. She submits that the petitioner-Municipal Council having chosen not to hold such an enquiry and to terminate the services of the respondent simplicitor, it was necessary to comply with the provisions of Section 25F of the

Industrial Dispute Act. The petitioner having failed to do so, the Labour Court has rightly directed the petitioner to reinstate the respondent with continuity of service and full back wages.

9. There can be no dispute that the Model Standing Orders are applicable to the Municipal Council. The Standing Orders stipulate that any person who worked as badli employee in an establishment for more than three months on probation, is deemed to be confirmed. There is no evidence on record to indicate that the respondent had been informed that after completion of the probationary period of three months, he was not to be continued on probation or that his service were to be terminated. In fact, the petitioner had continued the respondent in service upto March, 1992 when his services were terminated. He had continued as a permanent employee and hence, it was necessary for the petitioner to comply with the provisions of section 25F of the Industrial Disputes Act prior to the termination of his service. The Labour Court cannot be faulted for holding that the petitioner-Municipal Council has not followed the provisions of section 25F of the Industrial Disputes Act and had illegally terminated the services of the respondent. The submission of the learned advocate for the petitioner that the respondent was not duly qualified, is unsustainable in the facts of the

present case. The petitioner has initially appointed by the respondent on 3rd January, 1991 to 5th April, 1991 as a badli worker in the capacity of a Sub-Station Officer. There is nothing on record to indicate that the respondent had not disclosed his qualifications to the petitioner or that he had suppressed the fact that he did not possess the requisite qualifications for being appointed as Sub-Station Officer. In fact, it is the case of the respondent that he applied for the post of fireman and the petitioners on their own appointed him as Sub-Station Officer. After completion of that period in service, the petitioner has chosen to reappoint him as Sub-Station Officer on 12th June, 1991. Therefore, the submission made today is without merit. It was necessary for the petitioner to establish on record that the respondent could not possess the requisite qualifications. However, the petitioner did not care to lead any evidence whatsoever before the Labour Court. In such circumstances, it is difficult to accept the case of the petitioner.

10. The award of the Labour Court is, therefore, confirmed. The finding of the Labour Court that the petitioner had violated the provisions of sectiion 25F is upheld. Rule is discharged with no order as to costs.

11. However, in the facts and circumstances of this case, if the respondent applies for training in Nagpur, the petitioner shall consider it on its own merits. The petitioner may also take appropriate action if they find that the respondent is not duly qualified to hold the post in which he is working.

12. The arrears of back wages shall be paid to the respondent within 12 weeks from today.

Certified copy expedited.

(SMT.NISHITA MHATRE, J.)